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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
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2002 Biennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of The Telecommunications Act of 1996	)))))	MB Docket No. 02-277
	)	
Cross-Ownership of Broadcast Stations and Newspapers	))	MM Docket No. 01-235
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations In Local Markets	)))	MM Docket No. 01-317
Definition of Radio Markets	)	MM Docket No. 00-244

Comments of
Communications Workers of America
The Newspaper Guild/CWA
National Association of Broadcast Employees and Technicians/CWA
Printing, Publishing, and Media Workers Section/CWA

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SUMMARY

The Commission's broadcast media ownership rules are based on the First Amendment principle that the widest possible dissemination of information from diverse and antagonistic sources is essential to public welfare. As the Commission has repeatedly stated and as the Courts have repeatedly confirmed, common ownership of media reduces viewpoint diversity and competition. Therefore, structural rules limiting concentrated ownership of the media are necessary to protect and promote the free and vibrant press that is so vital to our democracy.

The media market, particularly the market for local news and information, is highly concentrated. Despite the advent of cable, satellite, and the Internet, the daily newspaper and the handful of local television newscasts continue to be the dominant means by which Americans get news and information, particularly about their local communities. The Nielsen data in the Commission-sponsored survey finds that about two-thirds of Americans get their news from television and about half read the daily newspaper. In contrast, only the largest markets have local cable news shows, which are often owned by a broadcast station or network, and half of all Americans still do not have Internet access at home.

Newspapers and television are highly concentrated markets. The largest broadcast television stations have upwards of 80 percent of local television market share, except in a handful of the largest cities. Most cities are one-newspaper towns, and only in a handful of cities do readers have a choice among daily newspapers.

Consumers and advertisers use the different types of media as complements, not as substitutes, for one another. As people learn about something from one news source, they go to another source to learn more. But if access to news from one source is reduced, they are less

likely to use another source for news. Two Commission-sponsored studies, one by Joel Waldfogel on consumer use of the media and the other by Anthony Bush on how advertisers use different types of media, provide compelling evidence that the different types of media are indeed different markets. There is no one large local media market—rather, there are separate and distinct newspaper, radio, and broadcast markets.

Relaxation of TV and radio media ownership limits over the past six years has accelerated the pace of media consolidation and concentration that in turn has lead to a decline in both the quality and quantity of local news, information, and entertainment programming. As the Commission-sponsored studies of local radio markets illustrate, concentration has resulted in less diversity and higher advertising prices. As a result of relaxed duopoly and dual network rules, the number of television outlets has also declined. Television stations and newspapers today devote fewer resources to newsgathering and in-depth investigation and analysis.

Media owners claim that relaxation of ownership rules will allow them to realize "synergies" from joint operations. While common ownership of media properties may enhance efficiencies, the Commission's charge is to protect and enhance media diversity, competition, and local identity—not efficiency. In fact, CWA journalists and broadcast technicians who work at commonly owned local newspaper/broadcast combinations and at commonly-owned local television duopolies report merged operations, cross-promotions, and less competition and differentiation in newsgathering and entertainment programming.

Therefore, the Commission must adopt strong structural rules to preserve and promote diversity, competition, and local identity in the media. There is overwhelming evidence to support retention of the newspaper/broadcast cross-ownership rule, the local television ownership rule, the radio/TV cross-ownership rule, the local radio ownership rule, and the dual network rule.

CWA also proposes an alternative framework for a unified local media ownership rule. The framework would consider newspaper, television, and radio as separate and distinct local markets; analyze market concentration in each of these separate and distinct markets; prohibit combinations where the distinct local product market(s) implicated in a proposed combination is already concentrated or would result in a concentrated market; permit combinations in unconcentrated markets with the burden of proof on the merging parties to demonstrate that the combination is in the public interest; and finally, would require that commonly owned media outlets maintain separate newsrooms and editorial staff.

This proceeding is of profound importance to the future of American democracy. It is imperative that the Commission adopt structural rules in order to protect and promote against further consolidation of the media into fewer hands, an outcome that would do serious harm to the free flow of ideas that is so essential to civic participation in our democracy.

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APPENDICES

I. INTRODUCTION

The Commission's media ownership rules must continue to promote the objectives of media diversity, competition, and localism. As the Supreme Court noted in 1945, the foundation of our democracy "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public."[1] As the Commission has stated repeatedly and as the Courts have repeatedly affirmed, common ownership of media reduces viewpoint diversity.[2] Structural rules that protect and promote diverse ownership are essential to preserve and promote the free flow of ideas and information that is so essential to our democracy.

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[1] *Associated Press v. United States,* 326 U.S. 1, 20 (1945) ("Associated Press").

[2] *See Sinclair Broadcast Group v. FCC,* 284 F.3d 148 (DC Circuit 2002) ("In *Sinclair,* the Court of Appeals noted that ownership limits encourage diversity in the ownership of broadcast stations, which can in turn encourage a diversity of viewpoints in the material presented over the airwaves. The court added that diversity of ownership as a means to achieving viewpoint diversity has been found to service a legitimate government interest…" Notice of Proposed Rulemaking, *In the Matter of 2002 Biennial Regulatory Review-Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; Cross-Ownership of Broadcast Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets; Definition of Radio Markets;* MB Docket No. 02-277, MM Docket No. 01-235; MM Docket No. 01-317; MM Docket No. 00-244, Sept. 12, 2002 (adopted), 15 ("Notice"). *See also Turner Broadcasting System v. FCC,* 512 U.S. 622, 662 (1994) ("Turner I") ("The Supreme Court has determined that 'promoting the widespread dissemination of information from a multiplicity of sources' is a government interest that is not only important, but is of the 'highest order,' Notice, 11 (quotation marks omitted); *Amendment of Sections 73.35, 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM and Television Broadcast Stations,* 45 F.C.C. 1476, 1477 (1964), 3 ("The Commission has elaborated on the Supreme Court's view, positing that 'the greater the diversity of ownership in a particular area, the less chance there is that a single person or group can have an inordinate effect, in a political, editorial, or similar programming sense, on public opinion at the regional level," Notice, 14; *Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets,* 16 FCC Rcd 19861, 19877 (2001), 37 ("Commission policy presumes that multiple owners are more likely to provide 'divergent viewpoints on controversial issues,' which the Commission has stated is essential to democracy," Notice, 117); *FCC v. National Citizens Committee for Broadcasting,* 436 U.S. 775, 779 (1978) ("NCCB") ("It is unrealistic to expect true diversity from a commonly- owned station-newspaper combination. The divergency of viewpoints cannot be expected to be the same as if they were antagonistically run."); *Metro Broadcasting, Inc. v. FCC,* 497 U.S 547, 571 at n. 16 (1990); *Fox Television v. FCC,* 280 F. 3d, 1027, 1042, 1053 ("*Fox*"), *Turner Broadcasting System v. FCC,* 520 U.S. 622, 190 ("*Turner II*") (quoting *Turner I*, 512 U.S. at 662-63 ("governmental purpose of the highest order in ensuring public access to a multiplicity of information sources", Notice 13, fn.96.)

The Communications Workers of America (CWA) represents more than 700,000 workers in many industries, including telecommunications, broadcasting and cable, publishing, manufacturing, airlines, health care, and the public sector. Our members depend upon the Fourth Estate—a free and vibrant press—for the information, investigation, and analysis they need to participate as informed citizens in public affairs. And they depend upon a diverse media to learn about the beliefs and experiences of different people in their local communities, across the country, and outside our borders in order to develop the understanding necessary to participate intelligently and empathetically in our increasingly interdependent world.

CWA represents more than 100,000 people who work in the various media industries as journalists, technicians, printers, and customer service and sales representatives. They know first-hand what is happening in this industry. They witness a decline in news quality, diversity, and competition that is a direct result of the economic pressures from the enormous consolidation and concentration of media ownership that has taken place. They find it harder to practice their craft in an environment of reduced staffing and fewer resources. They concur with the consensus emerging among those who study the media that there is a serious erosion in the quality of journalism, a tendency captured in the title of a recent book by two *Washington Post* editors: *The News about the News: American Journalism in Peril.*[3] CWA members who work in the media industries know from daily experience that ownership matters to quality and viewpoint diversity. They know that who owns the media outlet is the final arbiter as to what gets printed, broadcast, or posted on an Internet news site. They are convinced that relaxation of media ownership rules that would permit further consolidation and concentration of ownership into

[3] Leonard Downie Jr. and Robert G. Kaiser, *The News about the News: American Journalism in Peril,* New York: Alfred A. Knopf, 2002.

fewer hands will reduce their professional ability to provide high-quality news from diverse and antagonistic sources.

In this proceeding, the Commission seeks comment on whether it should retain, modify, or abandon its broadcast media ownership rules. Specifically, the Commission seeks comment on 1) the newspaper/broadcast cross-ownership ban that bars common ownership of a newspaper and television station in the same local market; 2) the duopoly rule that bars common ownership of television stations in all but the largest local markets and bars common ownership of the top four television stations in the largest markets; 3) the radio/TV cross-ownership rule; 4) the dual network rule that bars merger among the top four broadcast networks; 5) the local radio ownership rule that sets limits on the number of radio stations one entity can own in a local market; and 6) the national television ownership rule that prohibits any entity from controlling television stations which reach more than 35 percent of television households in the nation.[4]

CWA supports retaining the current local media ownership rules and the dual network rule as necessary to achieve the important policy goals of diversity, competition, and localism. There is abundant evidence to support retention of the current rules in order to preserve and promote diversity, competition, and localism in an industry characterized by concentrated vertical ownership and consolidated local ownership.

The Commission seeks comment on whether it would be possible to devise a single <u>local</u> media ownership rule that would promote its policy goals. CWA proposes one possible alternative framework for constructing a single <u>local</u> media ownership rule that would preserve and promote the important policy goals of diversity, competition, and localism.

[4] Notice, 6-7.

First, the framework must be based on a rigorous market analysis that defines newspaper, broadcast television, and radio markets as separate and distinct local product markets, with weak substitution among them in consumer usage patterns and advertising. Second, the framework must include a measure of market power in each of these distinct and separate local media markets. The rule must take into account market share in each local product market, not simply "voice counts," to determine the level of concentration in each local media market implicated by a proposed combination. Third, the rule must be based on a careful geographic definition of each local media product market. This is particularly important in defining the relevant newspaper product market. Fourth, the rule must prohibit any combination where the local media product market is determined to be highly or moderately concentrated. This would apply to horizontal combinations (for example, between two television stations in the same local market) and vertical combinations (for example, between a television station and a newspaper) if <u>either</u> of the media product markets were highly or moderately concentrated. Fifth, where the local media product market or markets implicated in a proposed combination are not concentrated, the rule would permit combinations only if the proposed combination is in the public interest. The burden of proof would be upon the merging parties to demonstrate public interest benefit from the combination. Sixth, waivers would be permitted only where one or more of the proposed merger partners is a failing firm.

Finally, where the rule would permit a combination in an unconcentrated market, the commonly owned media outlets must maintain separate newsrooms and editorial staff in order to preserve and promote viewpoint diversity. This qualifier is modeled after the Newspaper Preservation Act, an anti-trust exemption passed by Congress in 1970 to preserve two newspaper voices in a local community where one newspaper is failing. While the Newspaper Preservation Act allows common ownership and joint operation of business and printing functions, it requires that "there shall be no merger, combination, or amalgamation of editorial or reportorial staffs, and that editorial policies be independently determined."[5]

In addition, the Commission must preserve the dual network rule to prohibit the combination of any of the four largest networks in order to preserve diversity and competition among the dominant media.

The framework that we propose would allow the Commission to adopt a single local ownership rule that is justifiable based on rigorous analysis of the media marketplace. The framework would preserve and promote the policy goals of diversity, competition, and localism that are essential to a vibrant democracy.

II. TELEVISION AND NEWSPAPERS ARE THE DOMINANT SOURCE FOR LOCAL NEWS AND INFORMATION, PARTICULARLY FOR LOCAL NEWS AND INFORMATION

Newspapers and broadcast television are the dominant sources for news and information, particularly for local news and information. The Commission must protect against combinations that would reduce the number of independently-owned television stations in a local market; the number of independently owned newspaper(s) and television stations in a local market; and the number of independently-owned national broadcast networks to ensure the widest possible dissemination of news and information from these "undisputed leaders in contributing to viewpoint diversity."[6]

[5] U.S. Code Title 15. Sec. 1801-1804. Sec. 3(2).
[6] Notice, 107.

Despite the growth of cable, satellite, and the Internet, most Americans today get their news, particularly their local news, from the daily newspaper and broadcast television news shows.

Newspapers: More than half the adult population (54.3 percent) reads a daily newspaper and almost two-thirds (63.7 percent) read a Sunday newspaper, according to the Newspaper Association of America.[7] According to data reported in the FCC-commissioned studies, 62 percent of Americans read a daily newspaper (Waldfogel, FCC Study #3)[8] and 62.8 percent of Americans identified the newspaper as a source for local news and information in the past seven days (Nielsen Media Research, FCC Study #8). [9]

Television. Americans rely on television more than any other media for local and national news and information. According to the data in Waldfogel, 59.6 percent of Americans watch evening news and 64 percent of Americans watch nightly news.[10] The Nielsen survey found that 84.8 percent of respondents identified television as a source for local news and information in the past seven days.[11]

No other type of media comes close to this penetration level for news and information, particularly for local news and information.

Radio. Only about one-third (35.3 percent) of respondents in the Nielsen survey report radio as a source of local news and information.[12]

[7] Newspaper Association of America, *Facts About Newspapers: 2002,* 4.
[8] Joel Waldfogel, FCC Media Ownership Working Group Study #3, "Consumer Substitution Among Media," Sept. 2002, Part II Table 1, 63 ("Waldfogel"). The data is from Scarborough Research 1999-2000 consumer survey of 180,000 people in the top 66 media markets.
[9] Nielsen Media Research, FCC Media Ownership Working Group Study #8, "Consumer Survey on Media Usage," Sept. 2002, Table 001 ("Nielsen").
[10] Waldfogel, Part I Table 3, 48.
[11] Nielsen, Table 001.
[12] *Id.*

Cable. Only about one-third (37.9 percent) of those who watch cable for news report watching a local cable news channel.[13] The majority who watch cable for news and public affairs report turning to a national cable news channels: CNN (57 percent), MSNBC (16.5 percent), CNBC (5.1 percent), Headline News (5.9 percent.).[14]

Internet: The Internet is not a mass medium. According to the Nielsen data, only 18.8 percent of consumers turn to the Internet for news.[15] According to the U.S. Department of Commerce, only half (53.9 percent) of all American households in 2001 had an Internet connection at home. Internet home connection was even lower for low-income households earning less than $15,000 a year (25 percent), non-college educated households (12.8 percent), Blacks (39.8 percent), and Hispanics (31.6 percent).[16] Moreover, broadcast, cable, or newspaper outlets own most Internet news sites. Based on responses to the Nielsen survey, it appears that most people use the Internet news sites for non-local news. The most frequently cited Internet web sites used by Nielsen respondents as news sources were non-local media web sites: msn.com (22.4 percent), cnn.com (19.1 percent), yahoo.com (17.9 percent), aol.com (13.3 percent), msnbc.com (5.9 percent), newyorktimes.com (5.1 percent), foxnews.com (2.2 percent) usatoday.com (1.8 percent) abcnews.com (1.8 percent), and cbsnews.com (1.7 percent).[17]

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[13] The Nielsen question was: "What are the names of the news channels you watched in the past 7 days on cable or satellite for local or national news or current affairs?" In response, 10.8 percent answer a local cable news channel and 27.1 answer Fox News Channel, which is primarily local news. *See* Nielsen, Table 018. In another Nielsen question, 58 percent of respondents say that they have watched cable or satellite news channels for local news and current affairs. *See* Nielsen Table 008. One is left wondering how respondents interpreted this question, since when they were asked to identify the specific cable or satellite news channels they watch, only one-third identified local news channels.

[14] Nielsen, Table 018.

[15] *Id.*, Table 001.

[16] U.S. Department of Commerce, National Telecommunications and Information Administration, "A Nation Online: How Americans are Expanding Their Use of the Internet," Feb. 2002, Table 2-2, 26-27. The report is based on the Sept. 2001 Current Population Survey conducted by the U.S. Census Bureau (available at http:///www.ntia.doc.gov/ntiahome/dn/anationaonline2.pdf).

[17] Nielsen, Table 019.

In summary, most Americans continue to rely on television and newspapers for their news and information. Television's large audience, powerful visual images, and immediacy give it a unique role among the media. The national broadcast networks' evening newscasts are the most widely watched news in the country, with local broadcast stations and the daily newspaper dominating local news coverage. Television dominates national political coverage and advertising and local political advertising. Daily newspapers are read by more than half the population, and are the dominant media for in-depth reporting, investigation, and analysis. Newspapers are the only media whose primary mission and the preponderance of resources and talent are devoted to newsgathering and analysis.

While broadcast television and daily newspapers dominate news and information, they operate as distinct product markets. As we discuss below, consumers and advertisers use broadcast television, newspapers, and to a lesser degree, radio as complements, not substitutes. Thus, the Commission in its rulemaking must treat these dominant media types as distinct local product markets.

III. TELEVISION AND NEWSPAPERS ARE SEPARATE LOCAL MEDIA MARKETS, WITH WEAK SUBSTITUTION BY CONSUMERS AND ADVERTISERS

The evidence from the Commission's media ownership studies provides convincing evidence that daily newspapers, local television, radio, cable, and the Internet are separate local media product markets, with weak substitution by consumers and advertisers. Allowing common ownership of newspapers and television stations in the same market, or common ownership of television stations in concentrated local television markets, would reduce by one the very small number of news leaders in each of these local markets. This would significantly harm the First

Amendment objective of the widest possible dissemination of information from diverse and antagonistic sources.

A. CONSUMERS SHOW WEAK SUBSTITUTION ACROSS MEDIA TYPES

The issue of substitution is important to the Commission's assessment of media ownership rules since concentration of medium is of less concern if consumers can readily move to another medium. Conversely, if consumers do not switch readily among media types, rules that would permit more combinations and greater concentration would reduce the number of diverse viewpoints and therefore should be of concern to the Commission.

The Waldfogel study, commissioned by the Commission to examine consumer substitution across media types, provides a rigorous examination of consumer substitution among different types of media. Using several methodologies, Waldfogel's data demonstrates that consumers, for the most part, do not substitute across media.

The Newspaper Guild/CWA, along with other unions affiliated with the Department of Professional Employees of the AFL-CIO, asked Dr. Dean Baker, Co-Director of the Center for Economic and Policy Research, to review the studies commissioned by the Commission's Media Ownership Working Group. His report, *Democracy Unhinged: More Media Concentration Means Less Public Discourse* ("Baker")[18] is attached as Appendix A.

After reviewing the data inWaldfogel, Dr. Baker concludes that the data provides little evidence of consumer "substitution between types of media as sources for news. In fact, it (the Waldfogel study) shows that most media appear to be complements, which means that if

[18] Dean Baker, "Democracy Unhinged: More Media Concentration Means Less Public Discourse: A Critique of the FCC Studies on Media Ownership," 2002 ("Baker").

individuals receive less news from one source, they are likely to receive less news from all other sources."[19]

Waldfogel uses two methodologies to measure consumer substitution. The first methodology relies on aggregate data to determine whether changes in the availability of some type of media, for example an increase in the number of broadcast television stations available, lead to changes in the use of other media, for example a decline in newspaper circulation. Using this first methodology, Waldfogel finds weak and limited substitution effects. (Waldfogel, Part I, Table 12). According to Dr. Baker, the only substitutions that are meaningful are the substitutions between access to radio outlets and cable use, access to radio news and Internet use, access to daily papers and cable use, and the circulation of daily papers and cable use. This methodology finds no evidence of substitution between cable television usage and broadcast television usage, between Internet usage and broadcast television usage, between newspaper usage and Internet usage, or any of the other types of substitution that have been frequently suggested.[20]

Dr. Baker cautions that Waldfogel uses a very weak standard of statistical significance (a t-statistic exceeding 1 in absolute value) to find evidence of other types of substitution between media. Dr. Baker notes that

> Economists are usually hesitant to attribute very much importance to a result that is statistically significant at just a 10 percent level. The standard of a t-statistic greater than 1 is extremely weak- economists usually just dismiss such a finding as 'statistically insignificant.' This sort of statistical evidence is far too weak to provide a basis for policy.[21]

[19] *Id.*, iii.
[20] *Id.*, 10. *See* Waldfogel, Part I, Table 12, 58.
[21] *Id. See* Waldfogel, 23.

Therefore, the Commission should reject any evidence in the Waldfogel study that is not considered statistically significant at the 5 percent level or above.

Waldfogel's second methodology finds even less evidence of substitution between media.[22] The second methodology relies on micro level data on media usage to determine whether an individual's increased use of one type of media (e.g. the Internet) is associated with more or less usage of other types of media. This methodology allows for controls on factors such as age or income that might influence an individual's use of the media. In regressions controlling for age, education, race, and gender, the study finds evidence of substitution between only two among the many types of possible substitution—between Internet usage and television usage (Waldfogel, Part II, Table 12).[23] As we have noted earlier, the Commission cannot consider the Internet as a real alternative because (1) almost half of all American households (and even higher percentages of low-income, less educated, Black, and Hispanic households) do not have Internet connections at home; (2) most Internet sites are owned by other media and do not represent separately-owned news outlets; and (3) the Internet is primarily used to visit non-local news sites.[24]

In another regression that focuses specifically on news (Waldfogel, Part II, Table 13), Waldfogel again finds that the only substitution is between television and the Internet. There is no evidence for substitution between daily newspapers and television, nor between the daily newspaper and any other medium.[25] Table 1 below is Dr. Baker's reproduction of these relationships, with a negative sign indicating that the two media are substitutes and a positive

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[22] Baker, 10.
[23] *Id., See* Waldfogel, Table 12, Part II, 74.
[24] *See* 7-8 *supra.*
[25] Waldfogel, Part II, Table 13, 75. *See* also Baker, 9-12.

sign indicating a significant positive relationship between the two media. The only negative sign, or evidence of substitution, is between TV news and Internet news.

Table 1. The Relationship Between News Usage From Different Media					
	TV – News	Radio News	Internet News	Daily Paper	Cable News
TV News	--	+	-	+	+
Radio News	+	--	+	+	+
Internet News	-	+	--	+	+
Daily Paper	+	+	+	--	+
Cable News	+	+	+	+	--
Source: Dean Baker, *Democracy Unhinged: More Media Concentration Means Less Public Discourse,* 2002, 11 summarizing Waldfogel, 2002, Table 13, Part II. Signs indicate significance 10 percent confidence level (some are significant at a 5 percent level).					

Dr. Baker draws another important conclusion from the evidence in this table. He notes that "(t)he significant positive coefficients in this table suggest that people who get more news from one source such as television, are also likely to get more news from a second source, such as a daily newspaper."[26] In other words, different types of news media are more likely to be complements, not substitutes, for each other. Exposure to news from one media outlet increases one's interest in the news, leading one to consume more news from other outlets. Therefore, reduced access to the news from one outlet would actually lead to reduced consumption of news from other outlets.

Table 18 in Waldfogel's study summarizes the results of various tests. The table lists all the possible cases in which there is some evidence of substitution. The vast majority of the boxes are empty, indicating that none of the 11 different tests found any evidence of substitution. Moreover, in eight of the 34 cases where the table indicates evidence of substitution, the t-statistic was greater than one, or not statistically significant.[27]

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[26] Baker, 11.
[27] *Id.*, 11. In another review of Waldfogel's Table 19 summary results, Dr. Mark Cooper finds that only 19 of the

Waldfogel's study makes reference to another study he conducted on substitution between media.[28] The study examined the impact of readership of the national edition of the *New York Times* and voting in local elections. The study found a statistically significant negative relationship between *New York Times* readership among college educated people and readership of local newspapers, and *New York Times* readership and voting in local elections. The authors hypothesized that *New York Times* readers substitute national news for local news, and thereby are less informed about and participate less in local civic affairs.

The FCC Media Ownership Working Group also commissioned Nielsen Media Research to conduct a study of consumer attitudes toward the media, including a long list of questions concerning consumers' usage of different types of media and their willingness to substitute between media. The direct questions suggest substitutability.

However, Dr. Baker warns against the reliability of the Nielsen study. The problem, according to Dr. Baker, is that "respondents are in fact answering how they *hope* they will behave, rather than indicating how they *actually* would behave (emphasis added.)[29] Because economists prefer looking at what people do rather than what they say they would do, Dr. Baker concludes that "the findings of the Waldfogel study – that there is relatively little substitution between media as a news source – is probably the more accurate view of media usage.[30]

B. ADVERTISERS VIEW LOCAL NEWSPAPERS, RADIO, AND TELEVISION AS SEPARATE AND DISTINCT MARKETS

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possible 138 relationships (only three percent) show any statistically significant substitution effects. *See* Mark Cooper, Consumer Federation of America, Consumers Union, Center for Digital Democracy, Media Access Project, *Democratic Discourse in the Digital Information Age: Legal Principles and Economic Challenges at the Millennium*, Dec. 2002 ("Cooper, 2002"), 88.

[28] Lisa George and Joel Waldfogel, "Does the New York Times Spread Ignorance and Apathy?" The Wharton School (available at http://www.rider.wharton.upenn.edu/~waldfogi/workpaper.html)

[29] Baker, 13-14.

[30] *Id.,* 14.

The Commission's Media Ownership Working Group sponsored a study by C. Anthony Bush (Bush, FCC Study #10) to analyze whether there is a single local media market or several distinct local markets for newspaper, radio, and television advertising.[31] Based upon modeling of local business behavior in purchasing radio, newspaper, and television advertising for use in sales activities, Bush finds that there is "weak substitutability between local media."[32]

The Bush study estimates for a representative business establishment the elasticities of substitution (how much a local business would substitute one form of advertising for another, given a price increase) and cross-price elasticities (how much a different media type would raise or lower advertising prices in response to a change in the price of advertising of a different media type).

According to Bush, the study found that "(t)he estimated elasticities suggest weak substitutability between local media."[33] Using one test (the elasticity of substitution), Bush concluded that local business substitution between newspaper and local radio retail ads and between newspaper and local television retail ads was found to be "very small but statistically significant,"[34] while local business substitution between local radio and local television was virtually nil.[35] Using another test (ordinary cross-price elasticities), Bush found weak substitutability between newspaper retail ads and local radio ads. He found negative substitutability between newspaper retail ads and local television ads and between local radio ads and local television ads, which suggests that local newspaper and television ads and local radio

[31] C. Anthony Bush, Media Ownership Working Group Study #10, "On the Substitutability of Local Newspaper, Radio, and Television Advertising in Local Business Sales," Sept. 2002 ("Bush").
[32] Bush, 3.
[33] *Id.*
[34] *Id.,* 12.
[35] *Id.*

and television ads are complements rather than substitutes in the sales efforts of local businesses.[36] Finally, Bush also found that local radio advertising and local television advertising show little elasticity of demand, meaning that a small change in price in one of the media leads to large change in consumption of that media.[37]

In summary, the Bush study provides evidence that local businesses do not use newspapers, radio, and television as substitutes in their advertising purchases. They are distinct local advertising product markets. Because these local media markets are separate and distinct, concentration in any of these local media product markets would allow media owners to exercise market power by raising advertising prices above the level they would be in a competitive marketplace.

Because of the weak and limited substitution exercised by consumers and advertisers of different types of media, the Commission must adopt local ownership rules that treat television, newspapers, and radio as distinct and separate local product markets. The Commission must then analyze the market concentration in each of these distinct local media product markets. In the next section, we analyze market concentration in the television and newspaper markets, the undisputed leaders in local news and information. As we demonstrate, these are highly concentrated markets.

IV. LOCAL TELEVISION AND NEWSPAPER MEDIA MARKETS ARE HIGHLY CONCENTRATED

Media owners want the Commission to believe that local newspaper and television markets are characterized by a large number of significant market participants. But in fact, the

[36] *Id.*
[37] *Id.*, 13-14.

data demonstrates that local newspaper and local television markets are highly concentrated. This is particularly true for news and information. Most Americans have access to only one, or perhaps two, daily newspaper(s) and three or four broadcast television newscasts for local news and information.[38] In this highly concentrated media marketplace, the Commission must continue to protect and promote diverse ownership in local media markets through structural ownership rules.

A. LOCAL MEDIA MARKETS HAVE BECOME MORE CONCENTRATED AS LIMITS ON MEDIA OWNERSHIP HAVE BEEN REDUCED

Relaxation of broadcast media ownership rules by Congress in the Telecommunications Act of 1996 and by the Commission in various proceedings has resulted in increased concentration of ownership in local markets and slower growth in the number of media outlets.

The FCC commissioned a number of studies to examine trends in consolidation in the local media marketplace. The study by Scott Roberts, Jane Frenette, and Dione Stearns ("Roberts et al," FCC Study #1) compared the availability and ownership of media in local markets at three points in time—1960, 1980, and 2000.[39] The study counted the number of distinct TV, radio, newspaper, cable, and direct broadcast satellite system outlets and owners in 10 local radio markets in 1960, 1980, and 2000.

The Roberts et al study documents a substantial slowdown in the rate of increase in the number of owners in all 10 markets and a slowdown in the rate of increase in media outlets in

[38] Douglas Gomery, *The FCC's Newspaper-Broadcast Cross-Ownership Rule: An Analysis,* Washington, D.C.: Economic Policy Institute, 3,5 ("Gomery").
[39] Scott Roberts, Jane Frenette and Dione Stearns, Media Ownership Working Group Study #1, "A Comparison of Media Outlets and owners for Ten Selected Markets (1960, 1980, 2000)," ("Roberts, et al"), Sept. 2002.

nine of the 10 markets in the 1980-2000 period compared to the earlier 1960-1980 period.[40] While it would have been helpful to have compared changes in number of outlets and owners since passage of the Telecommunications Act of 1996, the slowdown in growth between 1980 and 2000 is especially striking, given the growth in new types of media (cable, DBS) and population over this period.

Using data from the Roberts et al study, Dr. Baker calculated the change in growth rates in the number of media outlets and the number of owners between 1960-1980 and 1980-2000. Growth rates of media outlets slowed substantially: by two-thirds in Altoona, Pa., Burlington, Vt., Lancaster, Pa., Myrtle Beach, S.C., Terre Haute, In., and even New York City, and by one-half in the other markets except Charlottesville, Va. Slower rates of growth in the number of owners was even more striking, dropping by 80 percent in Birmingham, Al., Burlington, Vt., Little Rock, Ar., Terre Haute, In., and New York City; and by one-half or more in Charlottesville, Va. and Lancaster, Pa. In Kansas City, Mo. there was virtually no growth in owners over the entire twenty-year period.[41] (See Table 2 below.)

Table 2. Growth Rate in Outlets and Owners in Ten Selected Media Markets

	Media Outlets		Media Owners	
	1960-1980	**1980-2000**	**1960-1980**	**1980-2000**
Altoona	73%	21%	33%	25%
Birmingham	57%	34%	70%	12%
Burlington	147%	43%	115%	21%
Charlottesville	62%	77%	100%	40%
Kansas City	100%	20%	106%	0%
Lancaster	50%	19%	60%	25%
Little Rock	106%	71%	114%	10%
Myrtle Beach	267%	43%	115%	44%
New York	73%	20%	93%	-2%
Terre Haute	117%	27%	138%	16%

[40] *Id.,* 15.
[41] Baker 15-16.

Source: Baker, 16 calculated from Roberts et al., Table 1.

Dr. Baker concludes "it is clear from the table above that the rate of growth of media outlets has slowed substantially in the last two decades." [42]

While the Roberts et al data is useful, it would have been helpful if the study had presented data for years that coincided with the changes in media ownership rules, so that it would have been possible to determine the extent to which these changes contributed to the slower growth.[43] In addition, it would have been helpful if the Roberts et al study had included market share information in addition to simply outlet counts. As Dr. Baker notes, "the number of outlets may provide little information about the range of choices available to consumers. If a small number of outlets are able to dominate the market, the availability of a large number of very small outlets could mean little to either consumers of advertisers."[44]

Another Commission sponsored study by George Williams and Scott Roberts (Williams and Roberts, FCC Study #11) finds a definite link between relaxation of media ownership rules in the six years since the weakening of restrictions on the number of radio stations that could be owned by a single company and increased concentration in the number of radio outlets.[45] The study finds the four firm concentration ratio (as measured by shares of ad revenue) went from less than 65 percent in 1996 to more than 85 percent in 2002.[46] The number of distinct owners has fallen by 34 percent since the change in ownership rules.[47] According to a calculation by Dr.

[42] *Id.*
[43] *Id.*
[44] Baker, 17.
[45] George Williams and Scott Roberts, FCC Media Ownership Working Group Study #11, "Radio Industry Review 2002: Trends in Ownership, Format, and Finance," Sept. 2002 ("Williams and Roberts").
[46] *Id.,* Chart 2. *See* also Baker, 17.
[47] *Id.,* 3.

Baker, the growth rate in the number of stations slowed substantially over the same period, from 1.3 percent from 1980-2000 to 0.9 percent 1996-2000. (This calculation excludes the saturated New York market.)[48] Finally, Williams and Roberts found that increased concentration in radio markets resulted in an approximately 1.0 percent annual decline in listeners and a 60 percent increase (adjusted for inflation) in the cost of radio advertising since 1996.[49]

Another Commission sponsored study, by George Williams, Keith Brown, and Peter Alexander (Williams et al, FCC Study #9) also suggests that increased concentration in the radio industry may have led to a decrease in diversity.[50] Williams et al find that since 1996 there has been some decrease in songs across markets. Dr. Baker notes that this finding is particularly striking, because its "methodology probably biased it against finding this result."[51] Since the study examines only the top ten play lists, the study does not pick up any change in music play lists of the vast majority of songs played by radio stations.[52]

Yet another study (J.M. Ford-Livene Levy and A. Levine, FCC Study #11) provides evidence of reduced growth in the number of broadcast television stations over the last ten years.[53] Between 1980-85, the total number of stations grew by 18.4 percent and between 1985-90 it rose 20.5 percent. But over the first half of the 1990s, the growth rate was only 6.2 percent, and during the second half of the decade, it fell to 5.7 percent.[54] According to Dr. Baker's

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[48] Baker, Table 5, 17-18.
[49] Williams and Roberts, 19, Chart XIII. *See* also Baker, 18.
[50] George Williams, Keith Brown, and Peter Alexander, "Radio Market Structure and Music Diversity," FCC Media Ownership Working Group Study #9, "Radio Market Structure and Music Diversity, Sept. 2002.
[51] Baker, 18.
[52] Baker also cautions that the findings of the study are limited because it does not examine change over time. *Id.*, 18-19.
[53] J.M. Ford-Livene Levy and A. Levine, FCC Media Ownership Working Group Study #11, "Broadcast Television: Survivor In a Sea of Competition," Sept. 2002 ("Levy et al").
[54] *Id.,* 21.

analysis of the Levy et al study, this decline was particularly dramatic among educational stations, which have experienced no growth since 1995.[55]

In addition to the Commission sponsored studies that document the negative impact of increased concentration in radio and television markets, the Commission also commissioned one theoretical study to examine the impact of increased concentration on television broadcast quality and advertising prices (Cunningham and Alexander, FCC Study #6).[56] This study found that greater concentration would allow broadcasters to exercise market power by increasing the amount of airtime they devote to advertising and by increasing the price they charge advertisers.[57] As a result, according to Dr. Baker, "public welfare declines as a result of increased concentration in broadcasting" because the study finds that "the consumption of broadcast material will fall as concentration increases, and that advertisers will pay higher rates."[58]

In summary, the media marketplace is growing more concentrated, with negative impact on quality and resulting increase in advertising prices.

We next turn to a discussion of market concentration in the two dominant markets for news and information, particularly local news and information: newspapers and television. The evidence is overwhelming that consumers have few independently owned media alternatives in the local market, particularly for news and information.

B. LOCAL NEWSPAPERS MARKETS ARE HIGHLY CONCENTRATED

[55] *Id.,* 21.
[56] Brendan C. Cunningham and Peter J. Alexander, FCC Media Ownership Working Group Study #6, "A Theory of Broadcast Media Concentration and Commercial Advertising," ("Cunningham and Alexander"), Sept. 2002.
[57] *Id.,* i.
[58] Baker, 4.

Local daily newspaper markets are highly concentrated. Most major metropolitan areas have only one or two daily newspapers covering local news of the entire metropolitan area. Readers may supplement the major daily with a suburban daily.

The relevant local daily newspaper geographic market for most local daily newspapers is the county. For larger markets, it is reasonable to define the local daily newspaper geographic market as the county plus the principal metro city associated with a DMA. This market definition corresponds to how readers and advertisers actually use and substitute among local daily newspapers—from among the metropolitan dailies, supplemented (in some cases) with the suburban daily that covers the news and advertising of the suburban community where the reader lives.

The Designated Market Area, or DMA, is not an accurate definition of the relevant geographic market for local daily newspapers. The DMA is far too large to define accurately "a region where a hypothetical monopolist could profitably raise the price of the relevant product."[59] In large metropolitan areas, the DMA includes *all* suburban newspapers plus the major metropolitan papers. But readers do not read the suburban newspaper from *all* communities. If they read a suburban daily, they only read the suburban daily covering news in the community in which they live. In smaller metropolitan areas, the DMA frequently includes several different and distinct cities, with little if any overlapping readership or advertising. Readers and advertisers throughout a large metropolitan area do not substitute a suburban daily for a large metropolitan daily covering issues for the entire region; similarly, readers and advertisers in one medium- or small-sized city do not substitute a daily newspaper covering

[59] U.S. Department of Justice and the Federal Trade Commission, Horizontal Merger Guidelines, April 8, 1997 (revised), 1.21.

issues in another medium or small- -sized city, even if is in the same broadcast television DMA service area.[60] (*See* Appendix B for a complete list of all daily newspapers in 17 DMAs. A careful review of the list illustrates that the DMA is much too large to be the relevant geographic market for daily newspapers.)

It should be noted that Roberts et al define the local daily newspaper market as the principal Metro city identified with the DMA.[61] This is certainly a plausible definition and one that the Commission could reasonably adopt, since it counts only those daily newspapers that "provide coverage of issues of interest to a sizeable portion of the population."[62]

Our market definition for the local daily newspaper market is consistent with the Commission's reasoning in the *Local Television Ownership Report & Order.* In that *Order,* the Commission devised an "independent voices" test to determine limits for local radio/TV combinations, counting each independently-owned English language daily newspaper with greater than five percent market share as a "voice." The Commission reasoned that the local

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[60] For example, in the eighth-ranked Washington, D.C. DMA, there are two major metropolitan dailies (*The Washington Post* and *The Washington Times)*, plus the *Northern Virginia Journal (*published in Alexandria, Va.), the *Frederick News Post* (Frederick, Va.), *Free Lance Star* (Fredericksburg, Va.)*, Prince Georges Journal* (Prince Georges Co, Md.)*, Montgomery Journal* (Montgomery Co., Md.), *Winchester Star* (Winchester, Va.)*, Potomac News* (Woodbridge, Va.)*, Daily Mail* (Hagerstown, Md.)*, Manassas Journal Messenger* (Manassas, Va.)*,* and *Star Exponent* (Culpepper, Va.).

Another example illustrates the reason the DMA is not a correct geographic market daily newspaper definition as applied to markets in medium- and small-sized markets. The Lancaster, Pa. DMA (#046) includes eight different cities and towns, each with their respective daily newspaper: the Harrisburg, Pa. *Patriot-News,* the Lancaster, Pa. *Intelligencer Journal,* the York, Pa. *York Daily Record* and *York Dispatch* (with joint business operations under a Joint Operating Agreement), the Gettysburg, Pa. *Gettysburg Times,* the Lewistown, Pa. *Sentinel*, the Carlisle, Pa. *Sentinel,* the Lebanon, Pa. *Daily News,* and the Hanover, Pa. *Evening Sun.* These newspapers are not substitutes for each other.

[61] The Roberts et al methodology finds six of the markets studied with only one newspaper (Kansas City, Mo., Lancaster, Pa., Terre Haute, In., Charlottesville, Va., and having corrected for their data error we include Myrtle Beach, S.C. and Altoona, Pa.); three with two daily newspapers (Little Rock, Ar., Burlington, Vt., and Birmingham, Al. which operates two papers under a Joint Operating Agreement); and New York City, the largest metropolitan area in the country has nine daily. Roberts et al, Table 2.

daily newspaper product market includes "only those newspapers that are widely available" and "that provide coverage of issues of interest to a sizeable portion of the population," noting that "although we recognize that other publications also provide a source of diversity and competition, many of these are targeted to particular communities and are not accessible to, or relied upon by, the population throughout the local market."[63] We adopt the Commission's definition of a daily newspaper as one that is published at least four times a week.[64]

In Table 3, we indicate the market share and market concentration for daily newspapers in 17 markets. The 17 markets correspond to the 10 markets in the Roberts et al study (which includes New York City and then every 28th market thereafter) plus the next seven largest DMAs after New York City. In each of these 17 DMAs, we identify one county in the DMA (usually the county with the largest suburban daily circulation in the respective DMA) plus the metropolitan dailies of the principal metro city associated with the DMA. (See Appendix B for a list of all daily newspapers and their circulation in each of these 17 DMAs.)[65]

The U.S. Department of Justice (DOJ) uses the Herfindahl-Hirchman Index (HHI) to calculate market concentration. The DOJ divides the spectrum of market concentration as

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[62] *Local TV Ownership Report & Order,* 113.
[63] The selection of the DMA as the relevant market in the local radio/TV ownership rule derives from the fact that the rule focused on local radio and TV ownership limits. This does not serve as a precedent for this instant proceeding, which also includes newspaper/broadcast cross-ownership. *Local TV Ownership Report & Order*, 14 FCC Rcd at 12953, 113. (Although we include non-English language daily newspapers in our market share analysis, we concur with the Commission's reasoning that they are not "accessible to, or relied upon by, the population throughout the local market.")
[64] "A daily newspaper is defined to be one that is published in the English language four or more times per week." See Notice, *Newspaper/Broadcast Cross-Ownership,* 4 citing 74 C.F.R. 73.3555 n6.
[65] The local radio/TV ownership rule counts as an independent voice only those daily newspapers in a DMA with circulation exceeding five percent. A daily newspaper is defined to be one that is published in the English language four or more times per week. *Id. See* 47 CFR Sec. 73.3555 n. 6; Newspaper/Broadcast Cross-Ownership Notice, fn 4. While our analysis includes daily newspapers with less than five percent market share, the Commission has correctly excluded daily newspapers with less than five percent market share from any independent voice test.

measured by the HHI into highly concentrated (HHI above 1800), moderately concentrated (HHI between 1000 and 1800), and unconcentrated (HHI below 1000).[66]

Every single newspaper market in our sample is highly concentrated with an HHI above 1800. Even New York City and Los Angeles are highly concentrated with HHIs of 2909 and 2036, respectively. The next six largest local newspaper markets all have HHIs above 3000, and all other selected markets have HHIs above 6000.

[66] U.S. Department of Justice and the Federal Trade Commission, Horizontal Merger Guidelines, April 8, 1997 (revised), 15.

Table 3. Market Concentration in Local Daily Newspaper Markets Daily Newspapers in Principal Metro City and One Surrounding County			
Principal City and One Surrounding County (DMA)	Daily Newspapers	Market Share	HHI
New York City/Westchester Co. NY (001)	Wall Street Journal New York Times NY Daily News NY Post Bloomberg News Journal News (Westchester) Others	36% 24% 15% 11% 6% 3% 5%	2287
Los Angeles and Orange Co, CA (002)	Los Angeles Times Orange County Register La Opinion LA Press-Telegram LA Daily Breeze Korean Central Daily Others	50% 18% 7% 5% 4% 3% 13%	2909
Chicago and Lake Co IL (003)	Chicago Tribune Chicago Sun-Times Lake Daily Herald (Lake Co.) Chicago Defender The News Sun (Lake Co.)	50% 35% 11% 2% 2%	3856
Philadelphia and Montgomery Co. PA (004)	Philadelphia Inquirer* Philadelphia Daily News* (*commonly owned with joint advertising) The Mercury (Mont. Co.) Times Herald (Mont. Co.) The Reporter	59% 31% 4% 3% 3%	4458
San Francisco and Santa Clara Co, CA (005)	San Francisco Chronicle San Jose Mercury News Palo Alto Daily News (Co) San Francisco Examiner Others	59% 31% 3% 6% 1%	4473
Boston and Middlesex Co, MA (006)	Boston Globe Boston Herald Boston Metro The Sun (Lowell MA) Others	47% 26% 18% 5% 4%	3239
Dallas/Fort Worth and Denton Co TX (007)	Dallas Morning News Fort Worth Star-Telegram Others	64% 29% 7%	4948
Washington, D.C. and Montgomery Co. MD (008)	Washington Post Washington Times Montgomery Journal	86% 11% 3%	7510
Kansas City and Linn Co. MO (031)	The Kansas City Star Linn News-Bulletin	95% 5%	9053
Birmingham, AL (039)	The Birmingham News Birmingham Post-Herald	88% 12%	7906

	(Joint Operating Agreement)		
Lancaster, PA (046)	Lancaster Intelligencer Journal	100%	10,000
Little Rock and Pulaski Co. AR (056)	Arkansas Democrat-Gazette Pulaski Daily Record	96% 3%	9187
Burlington, VT (090)	Burlington Free Press	100%	10,000
Altoona, PA (096)	Altoona Mirror	100%	10,000
Myrtle Beach, SC (109)	Sun News	100%	10,000
Terre Haute, IN (145)	Tribune-Star	100%	10,000
Charlottesville, VA (192)	Daily Progress Cavalier Daily	77% 23%	6,431
Source: Burrelle's Media Directory, 2003. Local daily newspapers in principal metro city of DMA and one surrounding county. Trade publications not included.			

While publishers point to long lists of print media outlets in a DMA, careful market definition and a market power analysis that analyzes market share, not simply the number of outlets, leads to the conclusion that daily newspaper markets are in fact highly concentrated markets.

C. LOCAL TELEVISION MARKETS ARE HIGHLY CONCENTRATED

Local television markets are also highly concentrated. We have calculated broadcast television market share in 16 television DMAs, again corresponding to the markets in Roberts et al plus (after New York City) the next seven largest DMAs. Table 4 below indicates the market share of the top four broadcast stations in each DMA. In all but the largest DMAs, the top four broadcast stations control more than 80 percent of the market. Even in the largest markets, the top four broadcast stations dominate, with market shares in New York City (71 percent), Los Angeles (57 percent), Chicago, Il. (68 percent), Boston, Ma. (78 percent) and Dallas, Tx. (63 percent), respectively.

We have also calculated the HHI for each of these markets. We use a calculation of the market shares of all independently owned television stations in each DMA.[67] The result shows that all markets are highly concentrated, with HHIs above 1800. (See also Appendix B.) This actually understates the level of concentration in local broadcast news, since with rare exception, only the top four local stations produce their own local newscasts.[68]

Table 3. Market Concentration in Local Television Markets - 2001

DMA	Market Share of Top Four Stations	HHI
New York City, N.Y. (001)	71 %	1959
Los Angeles, Ca. (002)	57%	1796
Chicago, Il. (003)	68%	1852
Philadelphia, Pa. (004)	83%	2370
San Francisco, Ca. (005)	80%	2126
Boston, Ma. (006)	78%	2276
Dallas, TX. (007)	63%	1881
Washington, D.C. (008)	85%	2254
Kansas City, Mo. (031)	80%	1914
Birmingham, Al. (039)	77%	1895
Harrisburg, Pa. (046)	95%	2555
Little Rock, Ar. (056)	93%	2605
Burlington, Vt. (090)	95%	3500
Altoona, Pa. (096)	100%	3166
Myrtle Beach, S.C. (109)	100%	4146
Terre Haute, In. (145)	100% among 3 stations	4178

Source: BIA, 2001. Market share = average 2000 LCS. HHI calculation based on combined market share for each independently owned commercial station with >1% market share. Market share combined for commonly-owned stations

[67] Twelve of the 16 markets have duopolies: New York City (NBC/GE, Fox, and Viacom each own two stations each); Los Angeles (NBC/GE owns three stations, Viacom and Fox own two); Dallas, Tx. (NBC/GE, Viacom, Fox, and Univision); Chicago (NBC/GE owns three stations, Fox owns two); Philadelphia (Viacom); San Francisco (Viacom and Cox); Boston (Viacom and Hearst-Argyle); Washington, D.C. (Fox); Kansas City, Mo. (Scripps Howard); Birmingham, Al. (Sinclair); Little Rock, Ar. (Clear Channel); Burlington, Vt. (Hearst-Argyle). Burrelle's Media Directory, 2003.

[68] Gomery, 5.

In the Newspaper/Broadcast Cross-Ownership proceeding, the United Church of Christ (et al) provided a study of 10 local television markets. The UCC study calculated the viewing market share in 10 local television markets of various sizes. The findings of that study are consistent with our calculations.[69]

In summary, the separate and distinct local daily newspaper market and the local television market are both highly concentrated. As Ben Bagdikian notes:

> It is a favorite axiom of large media operators that, while they have great power, if they abuse it the public will reject them. But in order to have the power of rejection, the public needs real choices and choice is inoperative where there is monopoly, which is the case in 98 percent of the daily newspaper business, or market dominance of the few, which is the case with television and most other mass media.[70]

V. OWNERSHIP RULES ARE NECESSARY TO PROTECT AND PROMOTE VIEWPOINT DIVERSITY

As any journalist knows, ownership affects content. Therefore, allowing further consolidation of ownership among the dominant media for local news and information would harm the public interest by eliminating one of only a handful of distinct voices in the local media market.

A. THERE IS ABUNDANT EVIDENCE THAT OWNERSHIP INFLUENCES VIEWPOINT

When we asked CWA members who are journalists, writers, editors, and producers of news and information programming to respond to the view that "ownership doesn't affect content," these professional reporters provided us with a wealth of anecdotes to demonstrate how ownership influences news reporting. We include four stories that are typical, though not

[69] Comments of Office of Communication, Inc. of United Church of Christ, National Organization of Women and media Alliance, *In the Matter of Cross-Ownership of Broadcast Stations and Newspaper, Newspaper/Radio Cross-Ownership Waiver Policy,* MM Docket No. 01-135, 96-197, Attachment 3, Dec. 3, 2001 ("UCC et al").
[70] Ben H. Bagdikian, *The Media Monopoly,* Boston: Beacon Press, 8-9 ("Bagdikian").

necessarily headline-grabbing, examples of how owners' priorities shape the way they cover stories.

- **From a transportation reporter at a large midwestern daily newspaper.** "Several years ago, I did a story on the financial condition of the local regional airline, using unpublished U.S. Department of Transportation data. The data showed that the airline had suffered heavy losses. After the story appeared, the airline owner pulled all his advertising in our newspaper, stopped distributing the newspaper on the airline flights, and demanded a letter of apology. As a condition for resuming advertising in the paper, the airline owner demanded and my editor agreed that I would never be allowed to write a story about this particular airline. This condition has continued to this day."

- **From a reporter at a mid-sized midwestern daily newspaper.** "I did a profile of the new chairman of the local port authority. I discovered the new chairman had some legal problems in the past. After the chairman called to object to mentioning this in the story, my editors re-wrote the story to downplay these problems. I have since learned that the publisher and editor have social relationships with the new chairman."

- **From a reporter in a medium-sized city working for a newspaper where the owner also owns the local television station: "**When the Nielsen TV ratings come out, I know I am expected to write a big story if the co-owned station's ratings are good and to bury the story if the co-owned station's ratings are down. Or another example. A few years ago, I ran a survey asking readers what they thought of local television news programs. My general manager told me that next time I do something that might affect our sister station, I better check with him first. I got the message—I haven't done a similar project since then."

- **From a reporter covering economic development and transportation for a newspaper in a Midwestern city:** "Every reporter is aware of the owners' interests. The CEO of our newspaper started a business coalition for economic growth. I knew that I was expected to give the coalition lots of favorable coverage. I've been here six years, I knew that, although no words were spoken."

These are not isolated examples. As Ben Bagdikian explains, most intervention by owners "is subtle, some not even occurring at a conscious level, as when subordinates learn by habit to conform to owners' ideas."[71] The result is a tendency by editors and journalists in local markets

[71] *Id.*, 45

to practice various degrees of self-censorship in the way they choose sources, write or edit their stories, or make editorial commentary. Sometimes, conflicts do surface. Thus, Bagdikian notes:

> Every year there is a 'distressing list' of reporters and editors of newspapers and magazines who are fired or demoted because they stumbled on the private politics of the owners, or a list of television producers and writers who make professionally competent decisions that run counter to the politics of the corporation. Even when such firings and demotions are clear interventions of corporate politics into the editorial process, the worst damage is not in one particular incident but in the long-standing aftermath in which working professionals at the editorial level behave as though under orders from above, although no explicit orders have been given.[72]

Academic studies and surveys of working journalists provide further documentation that who owns the media owner influences editorial voice.

Professor C. Edwin Baker, then of the Shorenstein Center at Harvard, reviewed the academic literature on the impact of newspaper chain ownership on content, profit orientation, and news quality. One study found that after Southam Press bought the Canadian *Windsor Star,* the *Star* greatly increased its reliance on the chain's news service for its front-page leads, leading to greater uniformity in news in the chain's newspapers. Another study of Gannett newspapers found that they were more likely to take editorial positions and were much more homogeneous in the positions they took compared to non-chain papers.[73] A survey of journalists by the Pew Research Center reported that almost half (48 percent) of all local news staff—and a majority of African-American journalists—believe corporate executives exert either a fair amount or a great deal of influence over news content.[74]

Corporate owners are increasingly pressuring their local TV stations to improve their profit margins, which are largely dependent on maintaining advertisement revenues. These

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[72] *Id.*, 36-37.
[73] Alger, 180-181
[74] Pew Research Center for The People & The Press, *Striking the Balance: Audience Interests, Business Pressures*

pressures can affect the ability of local news stations to maintain their journalistic independence. Local TV news directors are pressured to tailor their news programming to satisfy large local advertisers. The Project on Excellence in Journalism, an affiliate of the Columbia University Graduate School of Journalism, found in its survey of 118 news directors around the country that 53 percent reported that advertisers pressure them to kill negative stories or run positive ones. The survey also found that news directors believe that the wall between sales and news is getting harder to maintain, and sales are having more and more influence on newscasts. Almost one in five news directors—especially in smaller markets—say that their sponsors try to prevent them from covering stories. One quarter of news directors in small markets report that they have been pressured to censor their news. The report concludes that "the findings and comments (in the survey) raise questions about the journalistic independence of local television news."[75] (See Appendix C.)

CWA is especially concerned about the neglect of labor issues, and sometime the outright refusal to air ads paid for by labor organizations because they might antagonize advertisers. Media coverage of union and workers' issues has declined precipitously over the past several decades. This includes a dramatic drop in the number of labor editors, and a finding by the media watchdog group, Fairness and Accuracy in Reporting (FAIR) that the evening news programs of CBS, ABC and NBC recently devoted only two percent of their total air time to workers' issues, including child care, the minimum wage and workplace health and safety.[76]

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and Journalists' Values, nd. 21.

[75] Marion Just and Rosalind Levine, "News For Sale." Special Report: Local TV News, *Columbia Journalism Review/Project on Excellence in Journalism* (November/December 2001). Pp. 2-3

[76] Cited in Matt Witt, "As media turn away, the working class has become all but invisible," *The Guild Reporter,* October 22, 1999, pp.4-5. See also Frank Swoboda, "Labor coverage? Forget about it!" *The Guild Reporter,* October 22, 1999, 4-5.

The CWA has documented numerous recent examples in which local media outlets have rejected CWA ads designed to educate the public about a labor dispute. These stories underscore the importance of a multitude of media outlets under diverse ownership in a local market, so that an organization spurned by one outlet has an alternative.

- In 1995-96, the NBC and CBS affiliates in Washington, D.C. and NBC and Fox affiliates in Philadelphia refused to air CWA television spots because the stations did not want to offend a big advertiser (a large telecommunications company).

- In 1997, in a dispute with another telecommunications company, the *Dallas Morning News* refused to run a print ad telling the CWA side of the story.

- In 1997, during an organizing campaign at a major U.S. airline, CNN refused to air CWA TV spots on their closed circuit airport lounge telecasts that provided positive messages about CWA as an experienced customer service union. The airline pressured the media buyers not to run them.

- In 1997, CWA ran radio ads in Little Rock, Ar. during contract negotiations with a telecommunications company, but the stations stopped running them after a telecommunications company executive called the stations and threatened to pull company advertising.

- During a lockout by a broadcast network in 1998-99, the ABC radio network refused CWA's radio spots, as did virtually every other radio station or network we tried to buy—a matter of broadcaster solidarity against unions.

- In 1999, during a newspaper lockout, CWA attempted to run positive non-confrontational radio spots on behalf of The Newspaper Guild, but every major station in the city turned them down, except one small African-American owned station.

- In 2002, CWA attempted to place radio ads on several radio stations in Cleveland, Oh. to inform the community about a labor issue at a local TV station. The stations refused to run the ads after the corporate parent of the TV station that was also an advertiser on the local stations objected.

Because ownership affects media content, weakening media ownership rules would reduce a significant and unique local media voice.

B. CO-OWNED NEWSPAPER/TELEVISION COMBINATIONS REDUCE VIEWPOINT DIVERSITY

Publishers and broadcasters have argued that relaxing ownership rules would allow media owners to realize "synergies" that would provide greater resources to expand local news and information reporting. In the Newspaper/Broadcast Cross-Ownership proceeding, the publishers and the newspaper association provided the Commission with examples of these "synergies" at work at their co-owned properties.[77] While these so-called synergies may increase efficiencies, efficiency is not the policy goal—diversity is. And the evidence demonstrates that combined television stations or cross-owned newspaper/broadcast combinations reduce the number of independent voices in a local media market.

Similar examples of the co-mingling of news sources, reporting, and cross-promotion are evident in a small survey of existing co-owned newspaper and broadcasting properties undertaken by CWA in an effort to assess the impact of cross-ownership on media voice. In this study, CWA interviewed union members employed in newsrooms in four co-owned properties that had been grandfathered when the cross-ownership rule was promulgated in 1975.

The *Milwaukee Journal Sentinel,* WTMJ-TV, WTMJ-AM and WKTI-FM in Milwaukee, Wi. are owned by Journal Communications. TNG/CWA represents the journalists at the *Milwaukee Journal Sentinel*. In their comments in the newspaper/broadcast cross-ownership proceeding, the Newspaper Association of America (NAA) claim that the newspaper and broadcast stations do not share staff members or news bureaus, though Journal Communications can "achieve substantial cost savings through the use of some of the same news sources as well

[77] For a critique, *see* AFL-CIO Reply Comments, *Newspaper/Broadcast Cross-Ownership*, Feb. 19, 2003, 20-23 and CU et al Reply Comments, *Newspaper/Broadcast Cross-Ownership*, Feb. 15, 2002, 61-77.

as a number of centralized business and administrative operations. In particular, . . . all utilize centralized payroll, treasury, tax, audit, and legal services."[78]

The CWA interviews reveal, however, that although this described the situation in the past, things have changed. There is now a remote WTMJ-TV camera in the *Journal Sentinel* newsroom so print reporters can appear on WTMJ-TV to describe their stories. Cross-promotion of stories is now common. Newspaper editors send top stories to the cross-owned television station, which in turn promotes the stories in the newscast and directs viewers to read the *Journal Sentinel* or the Journal-owned suburban weekly for more information. *Journal Sentinel* editors have told newspaper reporters to give their stories to the TV station, which then "scoop" the newspaper. Other examples of commingling include a short newspaper column provided by the TV meteorologist and newspaper reporters (such as a business reporter) reporting on a story on TV.

Whatever other benefits co-ownership may produce for the parent company or even to the community, there is clear constraint of media viewpoint. While the newspaper reporters treat the TV newsroom as a competitor, the public views the paper, WTMJ (the voice of the *Milwaukee Journal*), and the radio as the same voice. Douglas Gomery of the University of Maryland School of Journalism describes how this situation created a serious conflict of interest. While the *Journal's* CEO and publisher sat on the commission making decisions about public funding of the Milwaukee Brewers baseball station, its radio station received lucrative revenues from broadcasting the Brewers' games, a relationship Gomery claims influenced reporting of the issue.[79]

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[78] Comments of Newspaper Association of America, *Newspaper Broadcast Cross-Ownership,*Dec. 3, 2001, 18-19.
[79] Gomery, 7.

In its comments in the Newspaper/Broadcast Cross-Ownership proceeding, Gannett touts the commingling of news operations as an advantage of its ownership of *The Arizona Republic,* the state's largest newspaper and KPNX in Mesa, Az.:

> Through cross-ownership . . . newspaper reporters may have time to work on an element or dimension of the story television reporters would not have the ability to cover, and can talk about it on the air. The same reporters who appear on television can write for the newspaper or web site. The same video cameras that supply pictures for television newscasts can supply full motion video for online newspaper "viewers."[80]

CWA represents the printers at the paper. As Gannett reports, there is a significant sharing of staff. More than 30 print reporters participate in KNPX newscasts and special programs. At the same time, KPNX reporters write special reports for print. All contribute to the web site Azcentral.com. KPNX's *12 News* stories are promoted in the newspaper, and vice versa. KPNX's *Call 12 for Action* problem-solving team has begun a bi-weekly column in print. Commingling of reporting and editorializing between the paper and television station staff range from political coverage, weather forecasting and sports coverage.[81]

At the co-owned Youngstown, Oh. paper *The Vindicator* and WFMJ-TV, the CWA interviews did not indicate any commingling of staff. However one interviewee told two troubling stories of how co-ownership affects coverage, as already discussed.[82] First, she said she was told that she was expected to give good coverage when the TV station received good Nielsen ratings but to check with the general manager/publisher of the paper if she wanted to criticize the station. Second, in the mid-1990s, she did a poll in the paper asking readers to rate

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[80] Comments of Gannett Co, Inc., *Newspaper/Broadcast Cross-Ownership,* Dec. 3, 2001, 9-10. Gannett acquired Central Newspapers, Inc. ("CNI"), Phoenix Newspapers, Inc. previously a subsidiary of CNI, which publishes *The Arizona Republic*, on August 1, 2000. It already owned KPNX, the NBC affiliate. Gannett has a temporary waiver for this arrangement pending KPNX's license renewal filing in 2006.
[81] *Id.*, 10.
[82] *See* 33 *supra.*

aspects of the local TV news broadcasts, which turn out to be unfavorable to WFMJ. The general manager then told her that next time, she should check with him first. This and the Brewers' conflict of interest example illustrate one of the serious consequences of shrinking local media voices, especially where there is only one local newspaper: the loss of independent local media sources capable of generating critical editorials, opinions and reportage regarding local broadcast programming, or business interests tied to broadcasters, or politicians who favor such business interests.[83]

At the co-owned Scripps-Howard *Cincinnati Post* and WCPO-TV, there is some co-mingling of staff and cross-promotion, although the worst abuses are constrained because collective bargaining agreements require additional compensation if print reporters are required to appear on-air.[84] However, there is increased cooperation between the co-mingled properties. The *Post* sends its schedule (summary of stories) that will appear in the next day's paper to WCPO and WCPO provides a summary of its spot news stories to the newspaper. A TV consumer reporter writes a column for the *Post.* As in Milwaukee, the journalists in the *Post* newsroom see WCPO as a competitor, but management cooperates in sharing sources and stories.

Perhaps one of the most telling examples of what may occur if the newspaper broadcast cross-ownership rule is weakened is what already occurred in Canada, with CanWest Global Communications Corp. ("CanWest Global"), the owner of Canada's second largest commercial broadcast chain (Global Television Network).

[83] Gene Kimmelman, Co-Director, Washington Office, Consumers Union. Testimony Before the Senate Committee on Commerce, Science, and Transportation on Media Consolidation (July 17, 2001).
[84] Where they exist, collective bargaining agreements can protect print and broadcast journalists—and media consumers—from employers who otherwise might require the journalist to report in print, over the air, and on-line, without adequate training in the new medium or compensation for the additional responsibilities.

Two years ago, CanWest acquired Canada's largest newspaper chain as part of a convergence drive and the corporation now controls at least 30 percent of the nation's daily newspaper circulation. Including its presence in Toronto through the *National Post,* CanWest publishes daily newspapers in every major Canadian city except Winnipeg. CanWest set off a firestorm of protest last year when it reversed journalistic tradition of local editorial independence by mandating that its 14 largest daily newspapers publish weekly editorials written at corporate headquarters.

In its decision on the broadcast license renewal for CanWest in August 2001, the Canadian Radio-Television and Telecommunications Commission (CRTC) concluded that common ownership "could potentially lead to the complete integration of the owner's television and newspaper operations. This integration could eventually result in a reduction of the diversity of information presented to the public and of the diversity of distinct editorial voices available in the markets served." CTRC therefore conditioned license renewal on separation of news management functions, though not newsgathering activities (that is, the newsrooms can be commingled).[85] This language provides inadequate protection, since it allows commingling of the daily reporting and news dissemination tasks of reporters.

Just four months after CRTC approval of its broadcast license renewal, CanWest adopted policies that undermine journalistic quality, viewpoint diversity, and local identity. In December 2001, the media giant announced that its 14 big city newspapers would have to run the same national editorial each week, issued from headquarters in Winnipeg. Any unsigned editorials

[85] Notice of Proposed Rulemaking, *Newspaper/Broadcast Cross-Ownership,* 51. *See also* Comments of CanWest Global Communications Corp., *Newspaper/Broadcast Cross-Ownership*, Dec. 3, 2001.

written locally at the 14 papers could not contradict the national editorials.[86] This flies in the face of Canadian and U.S. journalistic standards of local autonomy in editorial policy. In reaction to this outrageous behavior, *Montreal Gazette* journalists held a two-day byline withdrawal in opposition, several columnists resigned, and 175 articles were published across Canada and elsewhere analyzing and denouncing the move. In an open letter, *Gazette* employees criticized the chain editorial policy as an abridgement of freedom of expression. They wrote:

> Essentially, CanWest will be imposing editorial policy on its papers on all issues of national significance. Without question, this decision will undermine the independence and diversity of each newspaper's editorial board and thereby give Canadians a greatly reduced variety of opinion, debate and editorial discussion…
>
> We believe this centralizing process will weaken the credibility of every Southam paper. The company is narrowing debate and corrupting both news coverage and commentary to suit corporate interests. A free press is no longer free when competing voices disappear…[87]

CanWest Global corporate headquarters subsequently censored a report in a CanWest Global-owned newspaper, the *Leader Post,* on a speech critical of its chain editorial policy, and in June 2002 fired Russell Mills, publisher of the *Ottawa Citizen,* who persisted in publishing editorials that did not follow the CanWest chain editorial policy. This created such a firestorm in Canada that CanWest Global temporarily dropped its chain editorial policy. However, in Sept. 2002, CanWest resumed its policy of sending its papers national editorials, with the expectation that local publishers would print them.[88]

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[86] DeNeen L. Brown, "Canadian Publisher Raises Hackles: Family is Accused of Trying to Restrict Local Newspapers' Autonomy", *Washington Post,* Jan. 27, 2002, A25. *See* also Canadian Journalists for Free Expression, "Not in the Newsroom! CanWest Global, Chain Editorials and Freedom of Expression in Canada," April 2002 ("Not in the Newsroom!") available at http://www.cjfe.org/specials/canwest/canwintro.html); Statement of Stephen Kimber, Reply Comments of Consumers Union et al in *Newspaper/Broadcast Cross-Ownership,* Feb. 15, 2002.
[87] Open Letter from *Montreal Gazette* employees, Dec. 10, 2001. *See* Not in the Newsroom!
[88] Interview with Jan Ravensvergen, The Newspaper Guild/CWA, Dec. 17, 2002.

These examples provide compelling evidence that co-ownership reduces diversity by creating incentives to eliminate separate newsgathering operations in order to achieve efficiencies. It eliminates the competition that drives aggressive newsgathering. Outlets that would have competed for news sources and stories now share sources, assignments, staff, and editors.

C. COMMON OWNERSHIP OF TELEVISION STATIONS IN THE SAME MARKET REDUCES VIEWPOINT DIVERSITY

Common ownership of television stations also reduces diversity. Under common ownership of local television stations (duopolies), station owners are combining management, programming, and news operations.

CWA has direct experience with the Fox television duopolies in New York City and Los Angeles that were created in July 2001 after the Commission granted approval to News Corporation, the parent of Fox Television Stations, to purchase ChrisCraft Industries. As a result, Fox now owns two television stations in New York City (WWOR-TV channel 9 and WNYW-TV channel 5)[89] and two television stations in Los Angeles (KTTV channel 11 and KCOP-channel 13).[90] Prior to the merger, CWA represented the technicians at WWOR-TV in the New York market (the station is physically located in Secaucus, N.J.) and the technicians and news writers at KTTV in Los Angeles. To facilitate union representation at the merged properties, CWA and another union have agreed that CWA will represent all technicians and news writers at the Fox properties in Los Angeles, while the other union will represent employees at the Fox properties in New York.

The Fox duopolies in Los Angeles and New York City have merged station and news management. Since Fox took over in August 2001, there has been one General Manager and one News Director over the two Los Angeles stations and one General Manager and one News Director over the two New York City stations. In Los Angeles, there is some commingling of crews and reporters and sharing of tape. We anticipate this will accelerate after station staff

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[89] Fox also owns the *New York* Post in the New York City market under a permanent waiver of the newspaper/broadcast cross-ownership rule.
[90] The Commission conditioned merger approval upon a requirement that Fox divest one of the two stations in its

merge on January 6, 2003, since Fox plans to reduce the technician staffing levels by one-third. In New York City, Fox will move the operations of WWOR from Secaucus to WNYW's facilities in New York City, cutting the technician workforce by about twenty percent. While this may be more "efficient," merged operations do not advance the diversity policy goal. "We don't have to have two crews at one news event," a Fox executive told *Broadcasting and Cable* magazine.[91] Fox plans to merge the facilities of the two Los Angeles stations into the KTTV facility in late spring 2003. Already, KTTV's newscast was reduced and switched in June 2002 from an hour at 10 p.m. to a half-hour at 11. [92] Fox is now airing some shows such as the Montel Williams talk show and People's Court on both stations.

Other duopolies have also merged management and news operations.

- In Detroit, Viacom's CBS affiliate WWJ-TV dropped its local half-hour news show in November 2002 so as not to compete with its duopoly partner and UPN affiliate WKBD-TV. Scripps-owned WXYZ-TV will produce WKBD-TV's news show under a revenue-sharing arrangement.[93]

- Viacom's CBS Los Angeles duopoly will move its KCBS-TV noon newscast to 11 a.m. so as not go to head to head with partner KCAL-TV.[94]

- Meredith's Portland Or. duopoly KPTV and KPDX runs a combined newsroom, having shut down the news operation at KPDX, a UPN affiliate.[95]

- Ad agencies are worried about Fox TV's plans to combine ad staffs in duopoly markets. "Our biggest concern lies in your ability to manipulate the market and unfairly take advantage of smaller advertisers and their agencies," wrote Allen Banks, Saatchi & Saatchi's North American media director and chair of the media policy committee of the American Association of Advertising agencies, to Fox TV Stations chief Mitch Stern. The biggest worry, Banks said, is that Fox might pressure ad buyers to buy package deals

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newly created Salt Lake City duopoly. Fox now has 9 duopolies.

[91] Dan Trigoboff, "The duopoly marriage in three markets comes with some consolidation," *Broadcasting and Cable,* Aug. 6, 2001.

[92] Dan Trigoboff, All News is Local, *Broadcasting and Cable,* Oct. 14, 2002.

[93] Dan Trigoboff, "CBS Drops News in Detroit, *Broadcasting and Cable,* Nov. 25, 2002.

[94] Dan Trigoboff, "All news is local," *Broadcasting and Cable,* Oct. 7, 2002.

[95] Catherine Matacic, *American Journalism Review*, Sept. 2002.

from both stations. They also fear that Fox may demand that make-good spots be aired on the lower-rated of the two stations. The worry arose when Fox, as part of plans to eliminate weekday kids programming, moved most children's shows and their advertising to weaker stations acquired from Chris-Craft.[96]

- Recent news articles report common management of duopolies. While this may increase efficiencies, it does not promote diverse viewpoints. For example, there is one news director over Meredith's Portland, Or. duopoly stations, KPTV and KPDX-TV;[97] one general manager over Fox' Orlando, Fl. duopoly,[98] one news director at CBS's Los Angeles duopoly, KCALTV and KCBS-TV,[99] one general manager at Viacom's Boston duopoly WSBK-TV and WBZ-TV,[100] one general manager at Fox's Houston duopoly KRIV-TV and KTXH-TV.[101]

D. SINCE EDITORIAL ENDORSEMENTS INFLUENCE NEWS AND INFORMATION REPORTING, IT IS ESPECIALLY IMPORTANT TO PROTECT OWNERSHIP DIVERSITY TO ENSURE VIEWPOINT DIVERSITY

The Commission sponsored one study (Pritchard, FCC Study #2) in which the researchers reviewed the coverage of the 2000 election by ten co-owned newspapers and television stations to test whether cross-ownership is likely to lead to homogenization of viewpoints.[102] The study reported that of the ten combinations reviewed, five had a common slant and five had different slants. As Baker explains, Pritchard's study is flawed because it does not compare the election coverage of combined operations with the coverage of a reference group of independent newspapers and television that are not part of combinations.[103] It is possible that the news events may objectively have led one candidate or the other to be portrayed in a negative or positive manner.

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96 *Broadcasting and Cable,* Dec. 10, 2001.
97 Dan Trigoboff, "All News is local," *Broadcasting and Cable,* July 15, 2002.
98 Dan Trigoboff, "Knott lands at duop," *Broadcasting and Cable,* June 26, 2002
99 Dan Trigoboff, "Musical chairs in L.A.," *Broadcasting and Cable,* June 10, 2002.
100 Dan Trigoboff, "All News is local," *Broadcasting and Cable,* April 1, 2002
101 Dan Trigoboff, "All News is local.," *Broadcasting and Cable,* Dec. 12, 2001.
102 David Pritchard, FCC Media Ownership Working Group Study #2, "Viewpoint Diversity in Cross-Owned Newspaper and Television Stations: A Study of News Coverage of the 2000 Presidential Campaign," Sept. 2002.
103 Baker, 5-7.

Further, Pritchard's conclusion was based on a faulty review of his own limited data. On reviewing Pritchard's data, Dr. Baker found that two of the television stations reported as having a "Gore slant" actually slanted more towards Bush. Thus, Pritchard's limited data actually showed that seven of the 10 media combinations had a common slant.[104]

A recent much more extensive and rigorous study of newspaper coverage of 60 Senatorial campaigns across three election years published in the *American Political Science Review* reaches the opposite conclusion of the Pritchard study.[105] (The study is attached in Appendix C.) Political scientists Kim Fridkin Kahn and Patrick J. Kenney ("Kahn and Kenney") reviewed press coverage and editorial slant in all contested Senate races between 1988 and 1992, analyzing a total of 67 races involving incumbents and 17 open races. They reviewed news coverage in the largest circulating newspaper in each state, examining all articles that mentioned either candidate in the first, state, or editorial sections of the newspaper. In total, they examined 5,529 articles. The researchers designed their study to control against bias based on characteristics of candidates such as seniority, involvement in scandals, elective experience, campaign spending, and the closeness of the race. [106] In contrast, the Pritchard study had none of these controls, covered a much shorter time frame, and studied only one election between only two candidates.

[104] "It is also worth noting that two of the television stations in the survey that are identified as having a Gore slant actually slant more towards Bush than the average station included in the survey (NY-News Corp and Dallas). (The average slant among the ten television stations is –5.66. The slant for these two stations is –3.70 and –0.03, respectively.) Since the cross-owned newspapers in these markets also are identified as having a pro-Bush slant, this means that seven of the ten combinations had a common slant, and only three had a different slant in their coverage." *Id.*, 6.

[105] Kim Fridkin Kahn, and Patrick J. Kenney, "The Slant of the News: How Editorial Endorsements Influence Campaign Coverage and Citizens' Views of Candidates," *American Political Science Review,* Vol. 96, No. 2, June 2002, 381-394.

[106] *Id.,* 382.

Kahn and Kenney found that newspapers' editorial endorsements had a strong impact on the tone of coverage, prominence of coverage, number of criticisms of candidates, and the substance of coverage. They also found that coverage became more slanted after the newspaper endorsed a candidate and that endorsements influenced citizens' views of candidates. In sum, Kahn and Kenney have provided the most systematic evidence to date that newspaper coverage of campaigns is affected by editorial positions, which alter the tone of the news coverage given to incumbents.

At the conclusion of their article, the authors note several explanations why newspapers' editorial decisions and news content coincide. They cite the work of Bartholomew Sparrow, who notes that reporters are "employees of complex organizations who see their copy go through layers of editors" and who feel the "invisible hand" of the newsroom's social control. Reporters often regulate and censor themselves in order to be successful.[107]

The authors also offer an explanation as to why editorial preferences of newspapers influence news coverage of incumbent Senators. They note that "Senators, unlike challengers, are powerful figures, whose position in government can promote or thwart the interests of editors...If editors provide these Senators with favorable coverage, incumbents may be more likely to push policy agendas that resonate with the media elite" and may also be more friendly to reporters as sources of information.[108]

Unlike the Pritchard study, this far more rigorous study of newspaper slant in election coverage provides further evidence that ownership influences editorial voice and news coverage.

[107] Kahn and Kenney, 391 citing Bartholomew Sparrow, *Uncertain Guardians: The News Media as a Political Institution.* Baltimore: The Johns Hopkins University Press, 1999, 107-8.
[108] Kahn and Kenney, 392.

The evidence re-affirms the Commission's and the Court's repeated findings that diverse ownership protects and promotes diverse viewpoint. The Commission therefore must adopt structural rules that protect against further concentration of local media.

VI. THE COMMISSION MUST ADOPT STRUCTURAL OWNERSHIP RULES TO PROMOTE DIVERSITY, COMPETITION, AND LOCALISM

New media outlets such as cable, satellite, and the Internet have not led to a proliferation of independently owned news and public affairs programming. Rather, newspapers and television continue to be the dominant means by which Americans receive their news. Newspapers, television, and radio are distinct and separate media product markets, with weak substitution by consumers and advertisers. They are highly concentrated markets, and have become more concentrated as Congress and the Commission have reduced media ownership limits.

The Commission and the Courts have repeatedly affirmed that ownership diversity is a means to promote viewpoint diversity. Therefore, the Commission must adopt strong structural safeguards to protect and promote diverse ownership as a means to advance the First Amendment goal of wide dissemination of news and information from diverse and antagonistic sources.

The current rules serve to promote these goals and should be maintained. The newspaper/broadcast cross-ownership rule protects against the loss of one of only a handful of independently owned local news and information sources. This rule is as important today as it was in 1975 when it was first adopted. As the Supreme Court noted in its 1978 decision upholding the rule, "it is unrealistic to expect true diversity from a commonly-owned station-newspaper combination. The divergency of their viewpoints cannot be expected to be the same as if they were antagonistically run."[109] Most recently, in the *Sinclair* decision, the U.S. Court of Appeals upheld the Commission's judgment that common ownership reduces diversity.[110]

Similarly, the local television ownership rule, the radio/TV cross-ownership rule, and the local radio ownership rules protect and preserve the possibility of diverse voices, competition, and local identity. The evidence is clear that relaxation of broadcast television and radio ownership limits has led to further consolidation, less news and information programming, and higher advertising prices. The evidence also makes abundantly clear that television, radio, and newspaper markets are distinct and separate, and the Commission can therefore justify structural rules that place ownership limits on each distinct media type.

Finally, the Commission must preserve the dual network rule that prohibits combination among the top four broadcast networks. The media industry exhibits strong vertical consolidation. As one leading commentator notes, "Six firms dominate all American mass media."[111] They own national networks, broadcast, radio, cable, Internet, and print media outlets as well as program production facilities. Consolidation between any two of the top four broadcast networks would do irrevocable harm to the policy goals of diversity, competition, and localism.

The Commission in the Notice seeks comment on whether it is possible, and if so, how, to construct a single local media ownership rule. While CWA believes that the current rules should be maintained, we also propose as an alternative a framework for a local media ownership rule. The framework is as follows:

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[109] NCCB, 779.
[110] Sinclair, 161.
[111] The firms are General Electric, Viacom, Disney, Time Warner, News Corporation, and Bertelsmann. Bagdikian, x.

a. Newspaper, broadcast television, and radio markets are separate and distinct local product markets.

b. The rule must take into account market share of each independently owned media type in each local product market to determine the level of concentration in each local media market implicated by a proposed combination. Counting voices does not provide a rigorous test of market concentration.

c. The rule must be based on a careful geographic definition of each local media product market. The appropriate local daily newspaper product market is the principal Metro city and surrounding County.

d. The rule must prohibit any combination where the local media product market is determined to be highly or moderately concentrated. This would apply to horizontal combinations (for example, between two television stations in the same local market) and vertical combinations (for example, between a television station and a newspaper) if <u>either</u> of the media product markets were highly or moderately concentrated.

e. The rule would permit combinations only if the proposed combination would not result in market concentration in any of the implicated local media product markets. Additionally, the burden of proof would be upon the merging parties to demonstrate public interest benefit from the combination.

f. Waivers would be permitted only where one or more of the proposed merger partners is a failing firm.

Finally, where the rule would permit a combination in an unconcentrated market, the commonly owned media outlets must maintain separate newsrooms and editorial staff in order to preserve and promote viewpoint diversity. This qualifier is modeled after the Newspaper Preservation Act, an anti-trust exemption passed by Congress in 1970 to preserve two newspaper voices in a local community where one newspaper is failing. While the Newspaper Preservation Act allows common ownership and joint operation of business and printing functions, it requires that "there shall be no merger, combination, or amalgamation of editorial or reportorial staffs, and that editorial policies be independently determined."[112]

The framework that we propose would allow the Commission to adopt a single local ownership rule that is justifiable based on rigorous analysis of the media marketplace. The framework would preserve and promote the policy goals of diversity, competition, and localism that are essential to a vibrant democracy.

Respectfully submitted,

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Dated: January 2, 2003

[112] U.S. Code Title 15. Sec. 1801-1804. Sec. 3(2).